UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IONE LEWIS,

Plaintiff,

-against-

DAVIDSTEA (USA) INC. and 275 BLEECKER STREET LLC,

Defendants.

Case No. 17CV3000

COMPLAINT

Plaintiff, IONE LEWIS (hereinafter "Plaintiff"), through her undersigned counsel, hereby files this Complaint and alleges, as follows:

INTRODUCTION

1. This is a civil action to redress discrimination on the basis of disability in violation of Title III of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12181 et seq. ("ADA"), and its implementing regulation, 28 C.F.R. Part 36. Plaintiff also sets forth claims for unlawful discrimination under the New York State Executive Law (the "Executive Law") § 296, and the Administrative Code of the City New York (the "Administrative Code"), § 8-107.

2. On July 26, 1990, Congress enacted the ADA, 42 U.S.C. § 12101 et seq., the most important civil rights law for persons with disabilities in our country's history.

3. The Congressional statutory findings include:

(a) Some 49,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(b) Historically, society has isolated and segregated individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(c) Discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communications, recreation, institutionalization, health services, voting, and access to public services.

(d) Individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities.

(e) The continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society justifiably is famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and non-productivity. 42 U.S.C. § 12101 (a)(l)-(3), (5) and (9).

4. Congress explicitly stated that the purpose of the ADA was:

(a) To provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(b) To provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(c) To invoke the sweep of Congressional authority, including the power to enforce the Fourteenth Amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

5. The effective date for ADA Title III {ADA § 12181 et seq.), was January 26, 1992.

6. The 1991 ADA Standards for Accessible Design apply to new construction and alterations until March 14, 2012. As of March 15, 2012, compliance with revised standards, known as the 2010 ADA Standards for Accessible Design (hereinafter, the "Standards"), was required for new construction and alterations, accessibility and barrier removal. Premises altered between January 26, 1992 and March 15, 2012, must comply with either 1992 or 2010 Standards in accordance with the safe harbor provisions of the 2010 Standards.

PARTIES

7. The Plaintiff has cerebral palsy and utilizes a wheelchair for mobility. Plaintiff therefore has a disability within the meaning of the ADA. 42 U.S.C. § 12102(2)(A). Plaintiff also has a physical disability within the meaning of the laws of the State of New York.

8. Defendant DAVIDSTEA (USA) INC. (the "Tea Store") is an establishment primarily engaged in the sale of tea and desserts located at 275 Bleecker Street, New York, New York. The Tea Store is a "place of public accommodation" within the meaning of Title III of the ADA because its operations affect commerce and, among other things, it is "a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment" 42 U.S.C. § 12181(7)(E).

9. Defendant 275 BLEECKER STREET LLC (the "Landlord") owns and leases the space in which the Tea Store is located and is therefore an appropriate party pursuant to Federal Rule of Civil Procedure 20 as, in accordance with the ADA, the Tea Store and the Landlord (hereinafter collectively referred to as "Defendants") are jointly and severally liable for barrier removal.

10. The Landlord permits the Tea Store to occupy the subject premises pursuant to a written agreement.

JURISDICTION and VENUE

11. This Court has jurisdiction over the ADA claims pursuant to 28 U.S.C. §§ 1331 and 1343, and pursuant to 28 U.S.C. § 1367(a), and the Court has supplemental jurisdiction over Plaintiff's claims brought under the laws of the State of New York.

12. Venue lies in this District pursuant to 28 U.S.C. § 1391(b). The acts of discrimination alleged in this complaint occurred in this District, and the public accommodation which is the subject of this action is situated in this District.

STATEMENT OF FACTS

13. Defendants are required to remove architectural barriers to the physically disabled when such removal is readily achievable for a place of public accommodation that has existed prior to January 26, 1992, 28 CFR § 36.304(a). In the alternative, if there has been an alteration to Defendants' place of public accommodation since January 26,1992, then the Defendants are required to ensure, to the maximum extent feasible, that the altered portions of the facility are readily accessible to and useable by individuals with disabilities, including individuals who use wheelchairs, 28 CFR 36.402; and finally if the Defendants' facility is one which was designed and constructed for first occupancy subsequent to January 26,1993 as defined in 28 CFR 36.401 then the Defendants' facility must be readily accessible to and useable by individuals with disabilities as defined by the ADA.

14. Plaintiff has been visiting the area where the Tea Store is located since she was a child, when she would go with her parents.

15. She attended school nearby and continues to regularly patronize establishments in the Tea Sore neighborhood.

16. She last attempted to gain entry to the Tea Store on April 23, 2017.

17. Plaintiff will continue to visit the Tea Store and will attempt to enjoy the goods and services provided. The barriers to access at the Tea Store have effectively denied or diminished Plaintiff's ability to visit the property and have caused embarrassment and frustration to the Plaintiff.

18. Defendants have discriminated against the Plaintiff' by denying her access to full and equal enjoyment of the goods, services, facilities, privileges, advantages and or accommodations of its place of public accommodation or commercial facility, in violation of 42 U.S.C. 12181, et seq., and 28 CFR 36.302, et seq., as described below.

19. The barriers faced by plaintiff at Defendants' public accommodation include (but is not limited to) a step in front of the entrance to the Tea Store, which Plaintiff is unable to traverse in her wheelchair, and the absence of 18 inches of space on the pull side of the door, from the sidewalk.

20. Without the 18 inch space, Plaintiff will be unable to pull the door open because she is seated in the space the door pulls into.

21. A photograph depicting the foregoing is annexed hereto as Exhibit A, made a part hereof and incorporated by reference herein.

22. By reason of the foregoing, the Tea Store fails to provide a means by which people in wheelchairs may be afforded equal benefit of its services, in violation of 42 USC §§ 12182(2)(A)(iv) and 12182(B)(ii).

23. An inspection of the Tea Store was conducted and the barriers hereinafter detailed were observed, all of which the Plaintiff encountered or is aware of, and prevent her from entering the Tea Store and a enjoying cup of tea and/or a snack in comfort, which she desires.

24. Records of the NYC Department of Buildings reveal that substantial alterations have taken place at the Tea Store since the implementation of the ADA, the precise nature and scope of said alterations being presently unknown.

25. An inspection of the Tea Store was conducted, as hereinafter described, and barriers to access include, but are not limited to, the following (all of the violations listed refer to the Standards):

The Tea Store is on Bleecker Street between Jones and Cornelia Streets. The entrance door pulls open toward the street. There is no 18 inch space on the pull side of the door, which is located within a 24 inch recess. There is a six inch rise at the door which fills the entire recess.

The following violations of the Standards are present at the entrance:

a) When the renovations were made between 2011 and 2014, Defendants failed to provide an accessible route to the renovated primary function areas from the sidewalk, although it would not have been disproportionate to do so, in violation of 202.4.

b) There is no accessible route from the sidewalk to the entrance, as required by 206.2.1.

c) 206.2.5 requires that an accessible route be provided to all dining areas, not provided here.

d) The entrance does not comply with 206.4, due to the lack of an accessible route, and the lack of the level maneuvering clearance at the door, required by 404.

e) In violation of 206.5.1, there is no entrance which provides a door which complies with 404.

f) Even if a ramp is provided, there is no 18 inch space next to the door which will allow the Plaintiff to move out of the way while pulling the door open, in violation of 404.2.4.3.

g) Plaintiff cannot sit at the doorway and enter, due to the lack of a 60 inch level maneuvering clearance perpendicular to the door, in violation of 404.2.4, 404.2.4.1, 404.2.4.4.

h) Due to the failure to ramp the rise over ½ inch at the entrance (403.4, 303.4), there is no accessible route which consists of components capable of navigation by a wheelchair (206.4, 402.1 and 402.2).

There is no wheelchair accessible, ADA compliant seating inside the Tea Store, with the "peg leg" style tables, which do not provide adequate knee and toe clearance for Plaintiff in her wheelchair.

The following barriers are noted inside the Tea Store:

i) In spite of extensive renovations between 2011 and 2014, 5% accessible seating is not provided which complies with 902, in violation of 226.

j) In violation of 902.4, there is no dining surface which has a height of 26-30 inches, has clear floor space complying with 305 and provides knee and toe clearance complying with 306.

k) The presence of the center bar and legs on the floor under the pedestal style tables leaves Plaintiff with no dining surface to sit and enjoy her drink in her wheelchair, in violation of 904 and 303, 305 and 306.

FIRST CLAIM FOR RELIEF

(Americans with Disabilities Act)

26. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint as if fully set forth herein.

27. Title III of the ADA provides that "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any

person who owns, leases (or leases to), or operates a place of public accommodation."

28. Defendants have discriminated against Plaintiff on the basis of disability. Defendants' discriminatory conduct includes but is not limited to:

a. Discriminatory exclusion and/or denial of goods, services, facilities, privileges, advantages, accommodations, and/or opportunities;

b. Provision goods, services, facilities, privileges, advantages, and/or accommodations that are not equal to those afforded non-disabled individuals;

c. Failing to make reasonable modifications in policies, practices, and/or procedures as necessary to afford the goods, services, facilities, privileges, advantages, and/or accommodations of the subject property to individuals with disabilities;

d. Failing to design and/or construct the subject property so that it is readily accessible to and usable by individuals with disabilities;

e. Failing to remove barriers to individuals with disabilities where it would be readily achievable to do so.

29. Defendants could have removed some of the illegal barriers at the Tea Store by ramping, with railings, the step at the entrance and providing ADA compliant seating.

30. In the alternative, Defendants have violated the ADA by failing to provide Plaintiff with reasonable alternatives to barrier removal as required by 28 C.F.R. § 36.305.

31. Defendants' failure to remove the barriers to access constitutes a pattern and practice of disability discrimination in violation of 42 U.S.C. § 12188(b)(l)(B)(i), (b)(2)(A)(iv), and 28 C.F.R. § 503(a).

32. Defendants have and continue to discriminate against Plaintiff in violation of the ADA by maintaining and/or creating an inaccessible place of public accommodation.

33. Defendants' violations of the ADA have harmed and will continue to harm Plaintiff in the future.

SECOND CLAIM FOR RELIEF
(Violation of the Executive Law)

34. Plaintiff realleges and incorporates by this reference all allegations set forth in this Complaint as if fully set forth herein.

35. The Defendants have, and continue, to subject Plaintiff to disparate treatment by denying Plaintiff equal opportunity to use their place of public accommodation all because she is disabled.

36. By failing to comply with the law in effect for decades, the Defendants have articulated to disabled persons such as the Plaintiff that they are not welcome and not desired as patrons of their place of public accommodation.

37. The Defendants have discriminated against Plaintiff in violation of the Executive Law § 296(2), by maintaining and/or creating an inaccessible place of public accommodation.

38. The Defendants have failed to make all readily achievable accommodations and modifications to remove barriers to access in violation of Executive Law § 296(2)(c)(iii).

39. It would not impose an undue hardship or undue burden on the Defendants to make their place of public accommodation accessible.

40. As a direct and proximate result of the Defendants' unlawful discrimination, in violation of the Executive Law, Plaintiff has suffered, and continues to suffer emotional distress, including but not limited to humiliation, embarrassment, stress, and anxiety.

41. Plaintiff has suffered damages in the amount of at least $1,000.00 (ONE THOUSAND DOLLARS) and the total amount shall be determined at trial.

THIRD CLAIM FOR RELIEF
(Violation of the Administrative Code)

42. Plaintiff realleges and incorporates by this reference all allegations set forth in this Complaint as if fully set forth herein.

43. The Defendants have, and continue, to subject P1aintiff to disparate treatment by directly and indirectly refusing, withholding, and denying the accommodations, advantages, facilities, and privileges of their place of public accommodation, all because of disability, in violation of Administrative Code § 8-107(4).

44. The Defendants have discriminated against Plaintiff in violation of Administrative Code § 8-107(4), and Local Law 58 by maintaining and/or creating an inaccessible place of public accommodation.

45. The Local Civil Rights Restoration Act of 2005 (the "Restoration Act"), also known as Local Law 58, clarified the scope of the Administrative Code in relation to the New York City's Human Rights Law. The Restoration Act confirmed the legislative intent to abolish "parallelism" between the Administrative Code and the Federal and New York State anti-discrimination laws by stating as follows:

> The provisions of this title shall be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York State civil and human rights laws, including those laws with provisions comparably-worded to provisions of this title, have been so construed.

Restoration Act§ 7 amending Administrative Code §8-130.

46. The Administrative Code is to be construed broadly in favor of Plaintiff to the fullest extent possible. Albunio v. City of New York, 2011 NY Slip Op 02480 (N.Y. Court of Appeals, March 31, 2011).

47. As a direct and proximate result of the Defendants' unlawful discrimination, in

violation of Administrative Code, Plaintiff has suffered, and continues to suffer emotional distress, including but not limited to humiliation, stress, embarrassment, and anxiety.

48. The Defendants' long-standing refusal to make their place of public accommodation fully accessible was egregious, and undertaken with reckless disregard to Plaintiff's rights under the Administrative Code.

49. By failing to comply with the law in effect for decades, the Defendants have articulated to disabled persons such as the Plaintiff that they are not welcome and not desired as patrons of their place of public accommodation.

50. By refusing to make the place of public accommodation accessible, the Defendants have unlawfully profited from their discriminatory conduct by receiving revenues from unlawful space and then pocketing monies they should have lawfully used to make the place of public accommodation fully accessible. The unlawful profits plus interest must be disgorged.

51. Plaintiff has suffered damages in the amount of at least $2,000.00 (TWO THOUSAND DOLLARS) and the total amount shall be determined at trial.

INJUNCTIVE RELIEF

52. Plaintiff will continue to experience unlawful discrimination as a result of the Defendants' failure to comply with the above-mentioned laws. Therefore, injunctive relief is necessary to order the Defendants to alter and modify their place of public accommodation and their policies, practices and procedures.

53. Injunctive relief is also necessary to make the Restaurant readily accessible to and usable by Plaintiff in accordance with the above-mentioned laws, in part, by compelling Defendants to ramping, with railings, the entrance to the Tea Store and providing ADA compliant seating.

DECLARATORY RELIEF

54. Plaintiff is entitled to a declaratory judgment concerning each of the accessibility violations committed by the Defendants against Plaintiff as to the policies, practices, procedures, facilities, goods and services.

ATTORNEY'S FEES, EXPENSES AND COSTS

55. In order to enforce Plaintiff's rights against the Defendants, Plaintiff has retained counsel and is entitled to recover attorney's fees, expenses and costs pursuant to the ADA and the Administrative Code. 42 U.S.C. §12205; 28 C.F.R. §36.505; and Administrative Code § 8-502.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter a judgment against the Defendants, in favor of Plaintiff, containing the following relief:

A. Enter declaratory judgment declaring that the Defendants have violated the ADA and implementing regulations, Executive Law and Administrative Code and declaring the rights of Plaintiff as to the Defendants' place of public accommodation, and its policies, practices and procedures

B. Issue a permanent injunction ordering the Defendants to remove all violations of the ADA, Executive Law and Administrative Code, including, but not limited to, the violations set forth above;

C. Retain jurisdiction over the Defendants until the Court is satisfied that the Defendants' unlawful practices, acts and omissions no longer exist and will not reoccur;

D. Award at least $1,000.00 (ONE THOUSAND DOLLARS) to Plaintiff as compensatory damages as a result of the Defendants' violations of the New York State Executive Law and the Administrative Code of the City of New York;

E. Award reasonable attorneys' fees, costs and expenses pursuant to the Administrative Code;

F. Find that Plaintiff is a prevailing party in this litigation and award reasonable attorney fees, costs and expenses pursuant to the ADA; and

G. For such other and further relief, at law or in equity, to which Plaintiff may be justly entitled.

Dated: April 10, 2017

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EXHIBIT A